

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of:

ANDREW LEO LOPEZ
P.O. Box 12035
Albuquerque, New Mexico 87195

Certified Public Accountant
Certificate No. 23260,

Respondent.

CASE No. AC-2002-13

OAH No. N2003110535

DECISION AFTER NONADOPTION

This matter came on regularly for hearing before Jaime René Román, Administrative Law Judge, Office of Administrative Hearings,¹ in Sacramento, California, on March 1, 2004.

Robert B. Miller, Deputy Attorney General, Department of Justice, State of California, represented complainant.

Respondent Andrew Leo Lopez appeared² and represented himself.

Evidence was received and the matter submitted on March 1, 2004.

The proposed decision of the Administrative Law Judge was submitted to the California Board of Accountancy (hereinafter "Board") on March 11, 2004. After due consideration thereof, the Board declined to adopt said proposed decision and thereafter on May 20, 2004, issued an Order of Nonadoption and subsequently issued an Order Fixing Date for Submission of Argument. On June 26, 2004, Respondent filed his Objections to Proposed

¹ The Office of Administrative Hearings, extant in the executive branch of the State of California, provides a forum independent of the California Board of Accountancy fully effectuate the State's interest in providing due process by an independent and neutral adjudicative body. See *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017.

² Respondent's appearance, pursuant to stipulation, was effected telephonically. Government Code Sections 11425.20, 11425.30 and 11440.30; and Title 1, California Code of Regulations §1030(a). Prior to evidentiary submission on the issue of Respondent's culpability, Respondent renewed a motion to continue the hearing. The motion was denied.

Order and Penalty of Administrative Law Judge. In addition, on June 26, 2004, Respondent filed his Motion for Leave to File Response Briefs.³ On July 8, 2004, Complainant filed her Argument in support of Non-adoption of Proposed Decision and the Imposition of Revocation or Suspension of Respondent's Certificate. On July 12, 2004, Respondent filed his Post Hearing Brief Ordered by California Board of Accountancy. Written argument having been received from Complainant and from Respondent, including Respondent's Post Hearing Brief Ordered by California Board of Accountancy filed July 12, 2004, and said written argument having been considered, and the time for filing written argument in this matter having expired, and the entire record, including transcript of said hearing having been read and considered, the Board, pursuant to Section 11517 of the Government Code, hereby makes the following decision:

FACTUAL FINDINGS

1. On August 29, 2002, complainant Carol B. Sigmann, Executive Officer, California Board of Accountancy ("the Board"), solely in her official capacity made and filed an Accusation against Respondent Andrew Leo Lopez. On August 29, 2003, Ms. Sigmann, solely in her official capacity, made and filed a First Amended Accusation against Respondent Andrew Leo Lopez ("Respondent").

2. On June 25, 1976, the Board issued Certified Public Accountant certificate number CPA 23260 to Respondent. Respondent's certificate was renewed through January 31, 1998;⁴ and expired, without renewal, on February 1, 2002.⁵

3. On October 4, 1994, Respondent was disbarred from practice before the Internal Revenue Service by Order of Federal Administrative Law Judge ("ALJ") Richard A. Scully pursuant to Title 31, Code of Federal Regulations Sections 10.50 and 10.52(a). The facts, occurring in 1990 and underlying the imposition of this discipline, are that Respondent was found to have:

- A. Engaged in disreputable conduct within the meaning of Title 31, Code of Federal Regulations §10.51(d), by willfully participating in and counseling a client in an attempt to evade the payment of federal taxes.
- B. Violated Title 31, Code of Federal Regulations Section 10.20(a), by neglecting and refusing to promptly submit and/or counseling a client to refuse to promptly submit records or information to the Internal Revenue Service pursuant to a

³ Without citation of any authority, said Motion prays "for an order that grants leave to file response briefs, excuses any of the prosecution from filing briefs in his case and from their preparation, and such other and further and remedy as the Board may find just in these premises." Said motion is denied.

⁴ The certificate expired and was not valid during the period February 1, 1996 – September 15, 1996 for non-payment of renewal fee and non-submission of compliance declaration of continuing education.

⁵ Notwithstanding expiration, the Board has continuing jurisdiction. Business and Professions Code Section 118(b).

proper and lawful request by a duly authorized employee of the Internal Revenue Service.

- C. Engaged in disreputable conduct within the meaning of Title 31, Code of Federal Regulations Section 10.51(f) by attempting to influence the official action of an Internal Revenue Service official by the use of threats and coercion.

4. Respondent appealed the ALJ's disciplinary order to the Secretary of the Treasury Department. The Secretary upheld the ALJ's decision. The Secretary's decision became final after January 1, 1997, the effective date of the reporting statute.

5. Respondent appealed the Secretary's decision to the United States District Court, District of New Mexico. On October 31, 2000, Respondent's appeal was denied and the Order of Disbarment affirmed.

6. Respondent subsequently petitioned the United States District Court, District of New Mexico, for reconsideration. On January 17, 2001, the court denied Respondent's petition. In the court's order, the federal district court judge observed, in pertinent part:

"Plaintiff [Respondent herein] has accused a former United States Bankruptcy Judge of being a bigot, and of treating businesses owned by 'white folks' more favorably than those owned by Hispanics. Plaintiff is cautioned to avoid such unseemly accusations, especially when he has provided no evidentiary basis for them other than his mere allegation."

7. Respondent thereafter appealed the U.S. District Court's order affirming the Order of Disbarment to the United States Court of Appeals for the Tenth Circuit. On November 15, 2001, Respondent's appeal was denied.

8. On June 20, 2001, Respondent, a public accountancy licensee of the State of New Mexico Public Accountancy Board, was suspended for a period of five years. On July 20, 2001, Respondent's request to reopen the New Mexico Public Accountancy Board's Decision and Order was denied. On August 20, 2002, the Second Judicial District Court, County of Bernalillo, State of New Mexico, reversed the Order of Suspension.

9. Respondent did not report to the Board within 30 days of imposition or at any subsequent time:

- A. The October 4, 1994 Initial Decision by an Administrative Law Judge, ordering that Respondent be disbarred from practice before the Internal Revenue Service.
- B. The Decision of the Secretary of the Treasury, issued after January 1, 1997, upholding the Order of Disbarment.

- C. The October 31, 2000 Order of the U.S. District Court affirming the 1994 Order of Disbarment.
- D. The June 20, 2001, Order of Suspension by the New Mexico Public Accountancy Board.
- E. The November 15, 2001 Order of the U.S. Court of Appeals affirming the 1994 Order of Disbarment.

10. Respondent readily acknowledges failing to report the imposition of discipline to the Board within 30 days claiming:

- A. No affirmative duty existed that required the self-reporting of the October 4, 1994 Order of Disbarment.
- B. The effect of the Second Judicial District Court, a court of general jurisdiction, reversing the Order of Suspension wherein the court indicated the New Mexico Public Accountancy Board's action was a nullity functioned ab initio to excuse his failure to report that Board's Order of Suspension.⁶

11. Separately, Respondent claims the instant matter must be dismissed for want of jurisdiction based on the statute of limitations⁷ or, evidently, laches. Respondent further avers that the Order of Disbarment arises from retaliatory action perpetrated by the Internal Revenue Service as a consequence of Respondent's efforts to reform the Internal Revenue Service.

12. Factors concerning the credibility of evidence are set forth, in part, at Evidence Code Sections 412, 780, 786 and 790 and 791. Applying such factors, it is established that:

- A. Respondent's perception that the New Mexico state court's vacating of the New Mexico Public Accountancy Board's Order of Suspension effectively nullifies his obligation to self-report the imposition of discipline is over-stated. Respondent's further perception that the state court's portended nullification of the state administrative proceeding functions to nullify the federal actions is, at best, specious.⁸
- B. Respondent has established no factual underpinnings of prejudice sufficient to interpose the application of laches.⁹

⁶ That the discipline was vacated is established, that such discipline was effectively declared a "nullity" is not.

⁷ Respondent cites no statute applicable to this proceeding that interposes a statute of limitations. The Board is unaware of any statute of limitations applicable to a Board administrative disciplinary action; accordingly, Respondent's motion to dismiss for violation of the statute of limitations is denied. Cf. *Fahmy v. Medical Bd. of California* (1995) 38 Cal. App. 4th 810, 814.

⁸ U.S. Const. Art. VI, cl. 2.

⁹ Respondent's motion to dismiss pursuant to laches is denied. *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29.

- C. Following what emerges as a pattern in his filings, Respondent's propensity for "unseemly accusations, especially when he has provided no evidentiary basis for them other than his mere allegation" is amply demonstrated herein.

Circumstances in Mitigation

13. Respondent has no prior record of discipline in the State of California.
14. Notwithstanding the facts and circumstances underlying the imposition of discipline, it has not been established that Respondent has harmed any client in any jurisdiction.
15. The facts underlying the imposition of the Order of Disbarment occurred over a decade ago.

Circumstances in Aggravation

16. The facts underlying the imposition of the Order of Disbarment are:
- A. Respondent willfully participated in evading or attempting to evade, federal taxes, or the payment of federal taxes, by counseling clients to pay other creditors with funds withheld from employee wages for deposit of federal payroll taxes.
 - B. Respondent counseled clients to refuse to honor a lawful Internal Revenue Service summons.
 - C. Respondent used threats, duress or coercion in an attempt to influence the official action of an Internal Revenue Service officer.

Costs Findings

17. As found by the Administrative Law Judge, the Board has incurred reasonable investigation, prosecution and enforcement expenses in the sum of \$5,711.30.

LEGAL CONCLUSIONS

1. Business and Professions Code Section 5063(a) requires that a licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency.

Although the ALJ's Initial Decision ordering Respondent's disbarment was issued on October 4, 1994, Respondent is nevertheless subject to discipline pursuant to Section 5063(a)(3). The decision of the Treasury Secretary, upholding the ALJ's Initial Decision, became final after January 1, 1997, the effective date of the reporting requirements for matters including disbarments from practice before the Internal Revenue Service. At no time did Respondent report his disbarment to the Board.

Cause accordingly exists to revoke or suspend the license of Respondent for failure to self-report discipline by a governmental agency pursuant to Business and Professions Code Section 5063(a)(3), and as set forth in Findings 3 - 9.

2. Complainant also asserts that Respondent is subject to discipline pursuant to Business and Professions Code Section 5063(a)(3) for failing to report the suspension of his certificate to practice public accountancy by the New Mexico Accountancy Board on June 20, 2001. Respondent interposes the New Mexico state court's reversal of his discipline as an effective nullity of the fact of discipline.

Respondent errs.¹⁰

Indeed, it is not Respondent who possesses the capacity to determine what and when discipline should be self-reported. It is the Legislature. Having articulated a responsibility upon a licensee that the fact of discipline by a governmental agency must be reported pursuant to Business and Professions Code Section 5063(a)(3) upon its occurrence, Respondent failed in his obligation. That the New Mexico state court ultimately vacated the administrative discipline does not function to supplant Respondent's duty and responsibility as a California licentiate to his Board.

Cause accordingly exists to revoke or suspend the license of Respondent for failure to self-report discipline by a governmental agency pursuant to Business and Professions Code Section 5063(a)(3), and as set forth in Findings 3 - 9.

3. Respondent has been disbarred from practice before the Internal Revenue Service. Accordingly, cause exists to revoke or suspend Respondent's license pursuant to Business and Professions Code Section 5100(h), and as set forth in Findings 3-7.

4. Pursuant to the determination of the Administrative Law Judge, cause does not exist to order Respondent to reimburse the Board of Accountancy its costs of investigation and prosecution in the sum of \$5,711.30.

5. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Board

¹⁰ Respondent, acknowledging a duty to have reported the ALJ's Order of Disbarment but for the lack of an extant statute, argued that subsequent appeals from the ALJ's Order of Disbarment were not reportable events. However, as it pertains to his failure to report the New Mexico Public Accountancy Board's discipline, he now seeks to interpose his subsequent appeal as a bar to such reporting.


licensure.¹¹ In particular, the statutes relating to Board licensure are designed to protect the public from the potential risk of harm.¹²

6. Respondent's conduct as specified in Finding 16 was grossly inconsistent with his professional duties, functions, and responsibilities as a CPA. The circumstances in mitigation as specified in Findings 13-15 having been fully considered, together with the other facts and circumstances underlying the Accusation, including the circumstances in aggravation as specified in Finding 16, it is the determination of the Board that revocation of Respondent's license is warranted.

ORDER

Certificate number CPA 23260 issued to Respondent Andrew Leo Lopez is hereby revoked.

DATED: September 16, 2004


IAN B. THOMAS
President
California Board of Accountancy

¹¹ Cf. *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy*, *supra* at p. 816.

¹² See *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.

BEFORE THE CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the matter of the Accusation
against:

Andrew Leo Lopez
P.O. Box 12035
Albuquerque, NM 87195

Case No.: AC-2002-13

OAH No.: N2003110535

Certified Public Accountant
License No. 23260

Respondent

ORDER OF NONADOPTION OF PROPOSED DECISION

Pursuant to Section 11517 of the Government Code, the Proposed Decision of the Administrative Law Judge in the above-entitled matter is not adopted. The California Board of Accountancy will decide the case upon record, including the transcript of the hearing held on March 1, 2004, and upon such written argument as the parties may wish to submit. The Board is particularly interested in written argument directed to the question whether the penalty should be increased. The parties will be notified of the date for submission of such argument when the transcript of the above-mentioned hearing becomes available.

IT IS SO ORDERED this 20th day of May, 2004



Ian B. Thomas
Board President

BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA

In the Matter of:

ANDREW LEO LOPEZ
P.O. Box 12035
Albuquerque, New Mexico 87195

Certified Public Accountant
Certificate No. 23260,

Respondent.

CASE No. AC-2002-13

OAH No. N2003110535

PROPOSED DECISION

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Robert B. Miller, Deputy Attorney General, Department of Justice, State of California, represented complainant.

Respondent Andrew Leo Lopez appeared² and represented himself.

Evidence was received and the matter submitted on March 1, 2004.

FACTUAL FINDINGS

1. On August 29, 2002, August 13, 2003, complainant Carol B. Sigmann, Executive Officer, California Board of Accountancy ("the Board"), solely in her official capacity made and filed an Accusation against respondent Andrew Leo Lopez. On August

¹ The Office of Administrative Hearings, extant in the executive branch of the State of California, provides a forum independent of the California Board of Accountancy fully effectuate the State's interest in providing due process by an independent and neutral adjudicative body. See *Haas v. County of San Bernardino* (2002) 27 Cal.4th 1017.

² Respondent's appearance, pursuant to stipulation, was effected telephonically. Government Code §§11425.20, 11425.30 and 11440.30; and Title 1, California Code of Regulations §1030(a). Prior to evidentiary submission on the issue of respondent's culpability, respondent renewed a motion to continue the hearing. The motion was denied.

13, 2003, Ms. Sigmann, solely in her official capacity, made and filed a First Amended Accusation against respondent Andrew Leo Lopez ("respondent").

2. On June 25, 1976, the Board issued Certified Public Accountant certificate number CPA 23260 to respondent. Respondent's certificate was renewed through January 31, 1998;³ and expired, without renewal, on February 1, 2002.⁴

3. On October 4, 1994, respondent was disbarred from practice before the Internal Revenue Service by Order of Federal Administrative Law Judge ("ALJ") Richard A. Scully pursuant to Title 31, Code of Federal Regulations §§10.50 and 10.52(a). The facts, occurring in 1990 and underlying the imposition of this discipline, are that respondent was found to have:

- A. Engaged in disreputable conduct within the meaning of Title 31, Code of Federal Regulations §10.51(d), by willfully participating in and counseling a client in an attempt to evade the payment of federal taxes.
- B. Violated Title 31, Code of Federal Regulations §10.20(a), by neglecting and refusing to promptly submit and/or counseling a client to refuse to promptly submit records or information to the Internal Revenue Service pursuant to a proper and lawful request by a duly authorized employee of the Internal Revenue Service.
- C. Engaged in disreputable conduct within the meaning of Title 31, Code of Federal Regulations §10.51(f) by attempting to influence the official action of an Internal Revenue Service official by the use of threats and coercion.

4. Respondent appealed the ALJ's disciplinary order to the Secretary of the Treasury Department. The Secretary upheld the ALJ's decision.

5. Respondent appealed the Secretary's decision to the United States District Court, District of New Mexico. On October 31, 2000, respondent's appeal was denied and the Order of Disbarment affirmed.

6. Respondent subsequently petitioned the United States District Court, District of New Mexico, for reconsideration. On January 17, 2001, the court denied respondent's petition. In the court's order, the federal district court judge observed, in pertinent part:

"Plaintiff [respondent herein] has accused a former United States Bankruptcy Judge of being a bigot, and of treating businesses owned by 'white folks' more favorably than those owned by Hispanics. Plaintiff is

³ The certificate expired and was not valid during the period February 1, 1996 – September 15, 1996 for non-payment of renewal fee and non-submission of compliance declaration of continuing education.

⁴ Notwithstanding expiration, the Board has continuing jurisdiction. Business and Professions Code §118(b).

cautioned to avoid such unseemly accusations, especially when he has provided no evidentiary basis for them other than his mere allegation.”

7. Respondent thereafter appealed the U.S. District Court’s order affirming the Order of Disbarment to the United States Court of Appeals for the Tenth Circuit. On November 15, 2001, respondent’s appeal was denied.

8. On June 20, 2001, respondent, a public accountancy licensee of the State of New Mexico Public Accountancy Board, was suspended for a period of five years. On July 20, 2001, respondent’s request to reopen the New Mexico Public Accountancy Board’s Decision and Order was denied on July 20, 2001. On August 20, 2002, the Second Judicial District Court, County of Bernalillo, State of New Mexico, reversed the Order of Suspension.

9. Respondent did not report to the Board within 30 days of imposition:

- A. The October 4, 1994 Order of Disbarment.
- B. The October 31, 2000 Order of the U.S. District Court affirming the 1994 Order of Disbarment.
- C. The June 20, 2001, Order of Suspension.
- D. The November 15, 2001 Order of the U.S. Court of Appeals affirming the 1994 Order of Disbarment.

10. Respondent readily acknowledges failing to report the imposition of discipline to the Board within 30 days claiming:

- A. No affirmative duty existed that required the self-reporting of the October 4, 1994 Order of Disbarment.
- B. The effect of the Second Judicial District Court, a court of general jurisdiction, reversing the Order of Suspension wherein the court indicated the New Mexico Public Accountancy Board’s action was a nullity functioned ab initio to excuse his failure to report that Board’s Order of Suspension.⁵

11. Separately, respondent claims the instant matter must be dismissed for want of jurisdiction based on the statute of limitations⁶ or, evidently, laches. Respondent further avers that the Order of Disbarment arises from retaliatory action perpetrated by the Internal Revenue Service as a consequence of respondent’s efforts to reform the Internal Revenue Service.

⁵ That the discipline was vacated is established, that such discipline was effectively declared a “nullity” is not.

⁶ Respondent cites no statute applicable to this proceeding that interposes a statute of limitations. The undersigned is unaware of any statute of limitations applicable to a Board administrative disciplinary action; accordingly, respondent’s motion to dismiss for violation of the statute of limitations is denied. Cf. *Fahmy v. Medical Bd. of California* (1995) 38 Cal. App. 4th 810, 814.

12. Factors concerning the credibility of evidence are set forth, in part, at Evidence Code §§412, 780, 786 and 790 and 791. Applying such factors, it is established that:

- A. Respondent's perception that the New Mexico state court's vacating of the New Mexico Public Accountancy Board's Order of Suspension effectively nullifies a licentiate's obligation to self-report the imposition of discipline is over-stated. Respondent's further perception that the state court's portended nullification of the state administrative proceeding functions to nullify the federal actions is, at best, specious.⁷
- B. Respondent has established no factual underpinnings of prejudice sufficient to interpose the application of laches.⁸
- C. Following what emerges as a pattern in his filings, respondent's propensity for "unseemly accusations, especially when he has provided no evidentiary basis for them other than his mere allegation" is amply demonstrated herein.

Circumstances in Mitigation

13. Respondent has no prior record of discipline in the State of California.

14. Respondent, notwithstanding the facts and circumstances underlying the imposition of discipline, has harmed no client in any jurisdiction.

15. The facts underlying the imposition of the Order of Disbarment occurred over a decade ago.

Costs Findings

16. The Board has incurred reasonable investigation, prosecution and enforcement expenses in the sum of \$5,711.30.

LEGAL CONCLUSIONS

1. Business and Professions Code §5063(a)(3) provides, in pertinent part: "A licensee shall report to the board in writing of the occurrence of any of the following events occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of the cancellation, revocation, or suspension of the right to practice as a certified public accountant or a public accountant before any governmental body or agency."

⁷ U.S. Const. Art. VI, cl. 2.

⁸ Respondent's motion to dismiss pursuant to laches is denied. *Lam v. Bureau of Security & Investigative Services* (1995) 34 Cal.App.4th 29.

Respondent's October 4, 1994 discipline, occurring nearly three years prior to the effective date of Business and Professions Code §5063(a)(3), precludes a determination of culpability. Accordingly, cause does not exist to revoke or suspend the license of respondent for failure to self-report discipline by a governmental agency pursuant to Business and Professions Code §§5063(a)(3) and 5100(h), and as set forth in Findings 2 – 9.

2. Complainant, alleging a violation of Business and Professions Code §5063(a)(3), asserts that the appellate affirmations by the U.S. District Court and the U.S. Court of Appeals of respondent's disbarment are reportable events pursuant to §5063(a)(3). Respondent, in contrast, submits that the filing of a judicial appeal from an administrative order does not toll the affected administrative order. Consequently, the order having occurred prior to the effective date of §5063(a)(3), the subsequent federal affirmations of the administrative order are not reportable events.

While it is fundamental that administrative agency orders—particularly one rendered by an ALJ—are ordinarily recommended orders. Finality may occur upon the adoption by an agency. Upon application, an agency's action may be stayed. No evidence was presented of any stay (and, accordingly, none will be presumed by the undersigned). To require a respondent who has been disciplined by a governmental agency to self-report subsequent adverse decisions taken upon direct appeal would only function to duplicate that which permits cause for discipline; namely, the original final determination. The effect of complainant's argument would function as follows: a licentiate would be subject to discipline by Order of Disbarment by an administrative agency pursuant to §5063(a)(3); upon appeal of that order, the same licentiate would be subject to discipline upon a court's affirmation of that Order of Disbarment pursuant to §5063(a)(3). Were a licentiate to appeal to a court of appellate jurisdiction, that licentiate would again be subject to discipline upon that appellate court's affirmation of that Order of Disbarment pursuant to §5063(a)(3). Mindful of the length of time between appeals, a licentiate could conceivably be compelled to answer to this Board for each subsequent appeal. That cannot be the intent of the Legislature.

Cause accordingly does not exist to revoke or suspend the license of respondent for failure to self-report discipline by a governmental agency pursuant to Business and Professions Code §§5063(a)(3) and 5100(h), and as set forth in Findings 2 – 9.

3. Complainant next asserts that respondent is subject to discipline pursuant to Business and Professions Code §5063(a)(3) for failing to report the suspension of his certificate to practice public accountancy by the New Mexico Accountancy Board. Respondent interposes the New Mexico state court's reversal of his discipline as an effective nullity of the fact of discipline.

Respondent errs.⁹

Indeed, it is not respondent who possesses the capacity to determine what and when discipline should be self-reported. It is the Legislature. Having articulated a responsibility upon a licensee that the fact of discipline by a governmental agency must be reported pursuant to Business and Professions Code §5063(a)(3) upon its occurrence, respondent failed in his obligation. That the New Mexico state court ultimately vacated the administrative discipline does not function to supplant respondent's duty and responsibility as a California licentiate to his Board.

Cause accordingly exists to revoke or suspend the license of respondent for failure to self-report discipline by a governmental agency pursuant to Business and Professions Code §§5063(a)(3) and 5100(h), and as set forth in Findings 2 – 9.

4. Complainant seeks costs of reimbursement for investigation and prosecution. Notably, however, and despite the filing of two accusatory pleadings against respondent; complainant at no time either alleges cost reimbursement or, in the alternative, sought to amend the First Amended Accusation to conform to proof.¹⁰ Lacking procedural due process afforded respondent by providing, at the very least, notice of the Board's intent to seek cost reimbursement,¹¹ cause does not exist to order respondent to reimburse the Board of Accountancy its costs of investigation and prosecution in the sum of \$5,711.30 pursuant to Business and Professions Code §125.3 or §5107.

5. The objective of a disciplinary proceeding is to protect the public, the licensed occupation, maintain integrity, high standards, and preserve public confidence in Board licensure.¹² In particular, the statutes relating to Board licensure are designed to protect the public from any potential risk of harm.¹³

Respondent, admittedly, poses particular difficulty for the undersigned.

Upon having failed to timely report the fact of his New Mexico Public Accountancy Board discipline, respondent's culpability ensued. Nevertheless, a court of competent jurisdiction vacated the singular offense upon which respondent's culpability rested therein.

Against this backdrop is respondent's clear lack of interest in further pursuing an active public accountancy license in California. Imposing a revocation or suspension against an

⁹ Fascinatingly, respondent, acknowledging a duty to have reported the ALJ's Order of Disbarment but for the lack of an extant statute, argued that subsequent appeals from the ALJ's Order of Disbarment were not reportable events—a persuasive argument adopted by the undersigned (see Legal Conclusion 2). However, as it pertains to his failure to report the New Mexico Public Accountancy Board's discipline, he now seeks to interpose his subsequent appeal as a bar to such reporting.

¹⁰ Government Code §11507.

¹¹ Cf. *Salkin v. California Dental Ass'n* (1986) 176 Cal. App. 3d 1118.

¹² Cf. *Camacho v. Youde* (1975) 95 Cal.App.3d 161, 165; *Fahmy, supra* at p. 816.

¹³ See *Lopez v. McMahon* (1988) 205 Cal.App.3d 1510, 1516; *Arneson v. Fox* (1980) 28 Cal.3d 440.


administrative discipline otherwise vacated is not clearly compelled. Moreover, it cannot be readily ignored that the facts and circumstances underlying the discipline herein occurred over a decade ago wherein no evidence of client harm to anyone has been established. It is readily apparent as a consequence of this proceeding that respondent comprehends the obligation to self-report discipline within the time limits set forth by the Legislature upon its occurrence. The imposition of discipline that imposes terms and conditions of probation would serve no remedial purpose. Accordingly, balancing the competing and respective interests herein, and giving due consideration to the facts and circumstances underlying the Accusation (Legal Conclusions 3 and 5) and the circumstances in mitigation (Findings 13 – 15), the public interest will not be harmed by the issuance of a censure to respondent.

ORDER

A censure shall issue to respondent Andrew Leo Lopez, Certified Public Accountant certificate number CPA 23260, for violations of Business and Professions Code §§5063(a)(3) and 5100(h) as set forth in Legal Conclusions 3 and 5.

Dated: _____

3/11/04



JAIME RENÉ ROMAN

Administrative Law Judge
Office of Administrative Hearing

1 BILL LOCKYER, Attorney General
of the State of California
2 ROBERT B. MILLER, State Bar No. 57819
Deputy Attorney General
3 California Department of Justice
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Sacramento, California 94244-2550
5 Telephone: (916) 322-0253
Facsimile: (916) 327-8643

6 Attorneys for Complainant

8 BEFORE THE
9 CALIFORNIA BOARD OF ACCOUNTANCY
DEPARTMENT OF CONSUMER AFFAIRS
10 STATE OF CALIFORNIA

11 In the Matter of the Accusation

Case No. AC-2002-13

12 ANDREW LEO LOPEZ
P.O. Box 12035
13 Albuquerque, NM 87195

FIRST AMENDED ACCUSATION

14 Certified Public Accountant
Certificate No. 23260

15 Respondent.

16
17 CAROL B. SIGMANN alleges:

18 1. Complainant, Carol B. Sigmann, is the Executive Officer of the California
19 Board of Accountancy (hereinafter the "Board") and makes this Accusation solely in her official
20 capacity.

21 I.

22 LICENSE HISTORY

23 2. On or about June 25, 1976, the Board issued Certified Public Accountant
24 certificate number CPA 23260 to Andrew Leo Lopez (hereinafter "Respondent"). The certificate
25 is subject to renewal every two years pursuant to Business and Professions Code, section 5070.5.
26 The applicable renewal period for this certificate is February 1 through January 31 of even
27 numbered years. The Board's licensing records were transferred to the Department of Consumer
28 Affairs' centralized computer system in March, 1989. As a consequence, the underlying

1 documentation relating to the license history of Respondent is unavailable. The computerized
2 records reflect that Respondent's certificate was in a current status in March, 1989. The
3 certificate was renewed effective February 1, 1990, through January 31, 1996, upon receipt of the
4 renewal fee and declaration of compliance with continuing education regulations. The certificate
5 expired and was not valid during the period February 1, 1996, through September 15, 1996, for
6 the following reasons:

7 (a) The renewal fee, required by the Business and
8 Professions Code section 5070.5, was not paid, and;

9 (b) declaration of compliance with continuing
education regulations was not submitted.

10 3. Said certificate was renewed effective September 16, 1996, through
11 January 31, 1998, upon receipt of the renewal fee and declaration of compliance with continuing
12 education regulations ("active").

13 4. The certificate expired on February 1, 2002, and has not been renewed.

14 II.

15 STATUTES AND REGULATIONS

16 5. Business and Professions Code section 5100 provides "After notice and
17 hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under
18 Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or
19 may censure the holder of that permit or certificate to, one or any combination of the following
20 causes:

21 (h) Suspension or revocation of the right to practice before any governmental
22 body or agency."

23 6. Business and Professions Code section 5063 (a) provides, in part, that a
24 licensee shall report to the Board in writing of the occurrence of any of the following events
25 occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of
26 these events: :

27 (3) The cancellation, revocation, or suspension of the right to practice as a
28 certified public accountant or a public accountant before any governmental
body or agency.

7. Business and code section 118(b) provides in pertinent part that the suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. Business and Professions Code section 5070.6 provides that, except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration upon the filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees and providing evidence satisfactory to the board of compliance as required by Code Section 5070.5.

III.

GENERAL BACKGROUND

8. Respondent was disbarred from practice before the Internal Revenue Service on or about October 4, 1994, by Order of Administrative Law Judge Richard A. Scully, pursuant to Title 31 Code of Federal Regulations Sections 10.50 and 10.52(a). Respondent was found to have engaged in disreputable conduct within the meaning of Title 31 Code of Federal Regulations Section 10.51(d) by willfully participating in and counseling a client in an attempt to evade the payment of federal taxes. Respondent was also found to have violated Title 31 Code of Federal Regulations Section 10.20(a) by neglecting and refusing to promptly submit and/or counseling a client to refuse to promptly submit records or information to the Internal Revenue Service pursuant to a proper and lawful request by a duly authorized employee of the Internal Revenue Service. Respondent was further found to have engaged in disreputable conduct within the meaning of Title 31 Code of Federal Regulations Section 10.51(f) by attempting to influence the official action of an Internal Revenue Service official by the use of threats and coercion.

9. Respondent appealed the Decision of the Administrative Law Judge and the Order of Disbarment to the United States District Court for the District of New Mexico. The

1 appeal of Respondent was denied, and the decision of the Administrative Law Judge was
2 affirmed by the Honorable Bruce D. Black, Judge, United States District Court for the District of
3 New Mexico, October 31, 2000.

4 10. Respondent is a licensee of the State of New Mexico Public Accountancy
5 Board (New Mexico Accountancy Board). The certificate to practice public accountancy issued
6 to Respondent by the New Mexico Accountancy Board was suspended for a period of five (5)
7 years by the Decision and Order of that Board, dated June 20, 2001. Respondent's request to
8 reopen the Decision and Order which suspended his certificate to practice public accountancy
9 was denied on or about July 20, 2001. Subsequently, the Second Judicial District, County of
10 Bernalillo, State of New Mexico, the Honorable Robert Thompson, District Judge, reversed the
11 order of suspension, on or about August 20, 2002.

12 IV.

13 VIOLATIONS

14 **Business and Professions Code section 5100(h)**

15 [Suspension or Revocation of the Right to Practice before any Governmental Body or Agency]

16 11. By reference paragraphs 8 through 10 are incorporated herein. Respondent
17 violated Business and Professions Code section 5100(h), by reason of his disbarment from
18 practicing before the Internal Revenue Service.

19 **Business and Professions Code section 5063(a)**

20 [Failure to Notify the Board within 30 days of Cancellation, Revocation or Suspension of the
Right to Practice as a Certified Public Accountant before any Governmental Body or Agency]

21 12. By reference paragraphs 8 through 10 are incorporated herein. Respondent
22 violated Business and Professions Code section 5063(a), by failing to report to the Board his
23 disbarment from practicing before the Internal Revenue Service and the suspension of his
24 certificate to practice public accountancy by the New Mexico Accountancy Board within 30 days
25 thereof, even though the order of suspension was subsequently reversed.

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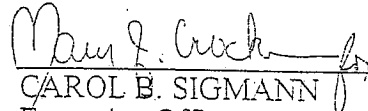
2 V.

3 PRAYER

4 WHEREFORE, the Complainant requests that a hearing be held on the matters
5 herein alleged, and that following said hearing, the California Board of Accountancy issue a
6 decision:

- 7 1. Revoking, suspending or otherwise imposing discipline upon Certified
8 Public Accountant number CPA 23260 issued to ANDREW LEO LOPEZ;
9 2. Taking such other and further action as the Board deemed necessary and
10 proper.

11 Dated: August 13, 2003

12 
13 CAROL B. SIGMANN
14 Executive Officer
15 California Board of Accountancy
16 Department of Consumer Affairs
17 State of California
18 Complainant

18 AG Docket No. 03541110SA2002AD0266
19 Accusation.wpt 7/11/02;
20 RBM:cl
21 revised 8/1/02;cl
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6
7 Attorneys for Complainant

8 BEFORE THE
CALIFORNIA BOARD OF ACCOUNTANCY
9 DEPARTMENT OF CONSUMER AFFAIRS
STATE OF CALIFORNIA
10

11 In the Matter of the Accusation

Case No. AC-2002-13

12 ANDREW LEO LOPEZ
P.O. Box 12035
13 Albuquerque, NM 87195

ACCUSATION

14 Certified Public Accountant
Certificate No. 23260

15 Respondent.

16
17 CAROL B. SIGMANN alleges:

18 1. Complainant, Carol B. Sigmann, is the Executive Officer of the California
19 Board of Accountancy (hereinafter the "Board") and makes this Accusation solely in her official
20 capacity.

21 I.

22 LICENSE HISTORY

23 2. On or about June 25, 1976, the Board issued Certified Public Accountant
24 certificate number CPA 23260 to Andrew Leo Lopez (hereinafter "Respondent"). The certificate
25 is subject to renewal every two years pursuant to Business and Professions Code, section 5070.5.
26 The applicable renewal period for this certificate is February 1 through January 31 of even
27 numbered years. The Board's licensing records were transferred to the Department of Consumer
28 Affairs' centralized computer system in March, 1989. As a consequence, the underlying

1 documentation relating to the license history of Respondent is unavailable. The computerized
2 records reflect that Respondent's certificate was in a current status in March, 1989. The
3 certificate was renewed effective February 1, 1990, through January 31, 1996, upon receipt of the
4 renewal fee and declaration of compliance with continuing education regulations. The certificate
5 expired and was not valid during the period February 1, 1996, through September 15, 1996, for
6 the following reasons:

- 7 (a) The renewal fee, required by the Business and
8 Professions Code section 5070.5, was not paid, and;
- 9 (b) declaration of compliance with continuing
education regulations was not submitted.

10 3. Said certificate was renewed effective September 16, 1996, through
11 January 31, 1998, upon receipt of the renewal fee and declaration of compliance with continuing
12 education regulations ("active").

13 4. The certificate expired on February 1, 2002, and has not been renewed.

14 II.

15 STATUTES AND REGULATIONS

16 5. Business and Professions Code section 5100 provides "(A)fter notice and
17 hearing the board may revoke, suspend or refuse to renew any permit or certificate granted under
18 Article 4 (commencing with Section 5070) and Article 5 (commencing with Section 5080), or
19 may censure the holder of that permit or certificate to, one or any combination of the following
20 causes:

- 21 (g) Suspension or revocation of the right to practice before any governmental
22 body or agency."

23 6. Business and Professions Code section 5063 (a) provides, in part, that a
24 licensee shall report to the Board in writing of the occurrence of any of the following events
25 occurring on or after January 1, 1997, within 30 days of the date the licensee has knowledge of
26 these events: :

- 27 (3) The cancellation, revocation, or suspension of the right to practice as a
28 certified public accountant or a public accountant before any governmental
body or agency.

7. Business and Professions code section 118(b) provides in pertinent part that the suspension, expiration, or forfeiture by operation of law of a license issued by the Board shall not, during any period in which it may be renewed, restored, reissued, or reinstated, deprive the Board of its authority to institute or continue a disciplinary proceeding against the licensee upon any ground provided by law or to enter an order suspending or revoking the license or otherwise taking disciplinary action against the licensee on any such ground. Business and Professions Code section 5070.6 provides that, except as otherwise provided in this chapter, an expired permit may be renewed at any time within five years after its expiration upon the filing of an application for renewal on a form prescribed by the board, payment of all accrued and unpaid renewal fees and providing evidence satisfactory to the board of compliance as required by Code Section 5070.5.

III.

GENERAL BACKGROUND

8. Respondent was disbarred from practice before the Internal Revenue Service on or about October 4, 1994, by Order of Administrative Law Judge Richard A. Scully, pursuant to Title 31 Code of Federal Regulations Sections 10.50 and 10.52(a). Respondent was found to have engaged in disreputable conduct within the meaning of Title 31 Code of Federal Regulations Section 10.51(d) by willfully participating in and counseling a client in an attempt to evade the payment of federal taxes. Respondent was also found to have violated Title 31 Code of Federal Regulations Section 10.20(a) by neglecting and refusing to promptly submit and/or counseling a client to refuse to promptly submit records or information to the Internal Revenue Service pursuant to a proper and lawful request by a duly authorized employee of the Internal Revenue Service. Respondent was further found to have engaged in disreputable conduct within the meaning of Title 31 Code of Federal Regulations Section 10.51(f) by attempting to influence the official action of an Internal Revenue Service official by the use of threats and coercion.

9. Respondent appealed the Decision of the Administrative Law Judge and the Order of Disbarment to the United States District Court for the District of New Mexico. The

1 appeal of Respondent was denied, and the decision of the Administrative Law Judge was
2 affirmed by the Honorable Bruce D. Black, Judge, United States District Court for the District of
3 New Mexico, October 31, 2000.

4 10. Respondent is a licensee of the State of New Mexico Public Accountancy
5 Board (New Mexico Accountancy Board). The certificate to practice public accountancy issued
6 to Respondent by the New Mexico Accountancy Board was suspended for a period of five (5)
7 years by the Decision and Order of that Board, dated June 20, 2001. Respondent's request to
8 reopen the Decision and Order which suspended his certificate to practice public accountancy
9 was denied on or about July 20, 2001.

10 IV.

11 VIOLATIONS

12 **Business and Professions Code section 5100(g)**
13 [Suspension or Revocation of the Right to Practice before any Governmental Body or Agency]

14 11. By reference paragraphs 8 through 10 are incorporated herein. Respondent
15 violated Business and Professions Code section 5100(g), by reason of his disbarment from
16 practicing before the Internal Revenue Service, and the suspension of his certificate to practice
17 public accountancy by the New Mexico Accountancy Board.

18 **Business and Professions Code section 5063(a)**
19 [Failure to Notify the Board within 30 days of Cancellation, Revocation or Suspension of the
Right to Practice as a Certified Public Accountant before any Governmental Body or Agency]

20 12. By reference paragraphs 8 through 10 are incorporated herein. Respondent
21 violated Business and Professions Code section 5063(a), by failing to report to the Board his
22 disbarment from practicing before the Internal Revenue Service and the suspension of his
23 certificate to practice public accountancy by the New Mexico Accountancy Board within 30 days
24 thereof.

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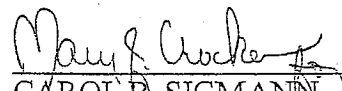
V.

PRAYER

WHEREFORE, the Complainant requests that a hearing be held on the matters herein alleged, and that following said hearing, the California Board of Accountancy issue a decision:

1. Revoking, suspending or otherwise imposing discipline upon Certified Public Accountant number CPA 23260 issued to ANDREW LEO LOPEZ;
2. Taking such other and further action as the Board deemed necessary and proper.

Dated: August 29, 2002


CAROL B. SIGMANN
Executive Officer
California Board of Accountancy
Department of Consumer Affairs
State of California
Complainant

RBM:cl

AG Docket No. 03541110SA2002AD0266

Accusation.wpt 7/11/02;

revised 8/1/02; 8/22/02;cl